

THE  
RELATION  
BETWEEN  
The Lord of a Mannor  
AND THE  
Copy-holder his Tenant.

*Delivered*

In the Learned Readings of the late Excellent  
and Famous Lawyer, CHAR. CALTHROP  
of the Honourable Society of  
*Lincolnes-Inne, Eq;*

Whereby it doth appeare for what causes a Copy-  
holder may forfeit his Copy-hold Estate, and for  
what not : and likewise what Lord  
can grant a Copy, and  
to whom.

Published for the good of the Lords of Mannors, and  
their Tenants.

*Non magis pro manibus quam pro servandis legibus liberi Civis  
pugnare debent, siquidem sine manibus Res publica potest con-  
sistere, sine Legibus non potest.*

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The second Edition, much corrected and amended: and also  
a Table of the Contents newly added.

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*LONDON,*

Printed for *W. Lee, and D. Pakeman,* at the Turkes-  
head, and Rainebow in Fleet-Street, 1650.

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## WORLDSAW

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2020 RELEASE UNDER E.O. 14176

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## Coppy-Holds.

**H**E great injuries which are offered, and small remedies which are used in cases of Coppy-holds, which as it seemeth, doe grow by the obscure knowledge what Law and Custome judgeth in these matters of Coppy-hold; moveth me to shew some part of my Travailles in these points, not thereby to animate Coppy-hold Tenants which would by too much advancing their Tenure, pretend only to be Tenants by Custome, and not Tenants at *Will*, nor to encourage any Coppy-hold Lord, which would by too much abasing these *Tenures*, pretend to have such Coppy-holders onely Tenants at *Will*, and not regard their customes; but to prove unto you, that as their Title and name sheweth they are Tenants at *Will*, and Tenants by Custome in their Land, and they consist both of their Lords *will* and *custome* of the *Mannour* in their degrees. And hat this *will* and *Custome* be contained within the Limits of Law and reason, according to such rules as shall be hereafter declared.

A

First

First I will shew what a Copy-hold is, then whereof it doth consist, and what estimation the same is of, by the antiquity of time, and by the Lawes and statutes of this Realme.

Master Littleton in his first book of *Tenures* defineth a Tenant by Copy of Court Role to be where a man is feised of a *Mannour* in which is a *Custome* that hath been used time out of mind, that certain Tenants of the same *Mannour* have used, to have certain Lands and Tenements to hold to them and their heires, in *Fee Simple*, *Fee Taile*, or for life at the will of the Lord after the *custome* of the *Mannour*: And that they have no other evidence but the Roles of the Court; by which definition, and by certain other observations of the Law it may be gathered, that a Copy-hold doth consist of these six principall grounds, or circumstances (*viz.*)

First, there must be a *Mannour*, for the maintenance of *Copy-hold*.

Secondly, a custome for the allowing of the same.

Thirdly, there must be a Court holden for the proof of the *Copy-holders*.

Fourthly, there must be a Lord to give the *Copy-hold*.

Fifthly, there must be a *Tenant* of capacity to take the *Tenement*.

Lastly, the thing to be Granted, which must be such as is Grantable, and may bee held of the

the Lord according unto the *Tenure*.

But first before I speak of these circumstances, I will briefly declare unto you the Dignity and estimation of *Copy-holders*, by the Antiquity and allowance of time, and by the Lawes and Statutes of this Realme.

It appeareth by a certain Booke intituled *De priscis Anglor. legibus*, translated out of the Saxon Tongue by Master Lambert of Lincolnes Inne; that *Coppy-holds* were long before the Conquest, and then called by the name of (Bookeland) as you may see in the beginning of the Booke, in the Treatise *De rerum & Verborum explicatione*; and by Master *BRACTON* an Ancient Writer of the Lawes of ENGLAND, who in his Booke writeth divers presidents and records of King *Henry*; of allowance that *Copy-holders* or *Customary tenants* doing their due services, the Lord might not expell them; according to the opinion of the latter Judges, in the time of *Edward the third* and *Edward the fourth*: and it appeareth by <sup>42. Ed. 3. 25. 7.</sup> *Master Fitz-Herberts Abridgement*, they were <sup>E. 4.</sup> preserved by a speciall writ for that purpose, and <sup>per Danby 21.</sup> the Lord thereby compelled to do right. And <sup>PT. Brian. 4. Rep.</sup> in the time of *Henry the fourth*, *Tenants by the* <sup>E. 1.</sup> *Virge*, which are the same in Natur: as *Copy-* <sup>Brownes Cas.</sup> *holders* be, were allowed by the name of *Soke-* <sup>15. H. 7. 10. 27.</sup> *maines* in *Frankenure*, and in the time of *Hen-* <sup>H. 8. 28.</sup> *ry 7.* were allowed aid of the King for defence of their estates. So that in every Kings time

*Coppy-holders* have had their Allowances according unto their Natures unto this present time: wherein our Justices are still of opinion, as the said grave Sages have been in times past. Now I will further proceed in some particular use of these Tenures, according to the Lawes and Statutes of this Realm: And because I find none that doth so much deface the estimation of *Coppy-holders*, as Master *Fitz-Herbert* doth in his Writ *De Relecto clauso*, I will begin with his words and judgement in the same, and proceed to other Authorities.

Master *Fitz-Herbert* saith, that this Terme *Coppyholders* is but a new Terme, newly found out, and that in old time they were called Tenants in Vilenage, or base Tenure; and this saith he doth appeare in the old Tenures; for no *Coppy-holders* are there spokē of, although there were at that time such Tenants. But then saith, they were called Tenants in Villenage, and saith as appeareth *Hillar*. 14. *Henry 4.* If a false judgement be given against them, in the Lords Court, they shall have no remedy, but sue to their Lord by petition, because to hold by *Copy of Court Role*, which is as he saith base Tenure, is to hold in Villenage; which said opinion of *Fitz-Herbert*, has been by divers wrested, to make no diversity between Tenure in Villenage, and Tenure by *Copy of Court Role* or base Tenure; wherein whatsoever interpretation may be made, Master *Fitz-Herbert* meaning

meaning is very plaine, and the Book of the old Tenures is to be far otherwise understood: as also I suppose, all other authorities in our Law do make and appoint difference between the said Tenures. And first touching the Book of the old Tenures, it is plaine, that the Booke maketh a plaine distinction between Tenure in Villenage, and Tenure in Fee Base, which is understood this Tenure by Copyhold, and calleth it a Fee, although a base Fee, and maketh diverse distinctions between them, and faith, that the Tenants in Villenage must doe all such things as their Lord will command them. But otherwise, it is of the Tenants in base Fee. And thus it seemeth the said Booke of old Tenures is by Master Fitz-Herbert misrecited; which I am the bolder to affirm, saving the due reverence to his Learning, because one Master Thornton of Lincolns Inne, a man very learned, in his late reading there upon the Statute of Forger de fairs: speaking of Forging Court Roles, did plainly affirme the Book of the old Tenures to be mistaken by Master Fitz-Herbert in this point. And besides for the further credit of Copy-holds, we ought to consider the great Authority of Mr. Littleton, who amongst the rest of his Tenures, doth make a divided Chapter thereof, differing from the Tenure in Villenage, shewing there the Suites and Plaints of Copy-holders, saying that they have an Estate of Inheritance according to the

Cestome: And delivereth his own opinion, that if a *Codpyholder* doing his services be expelled by the Lord, he shall have an Action of trespass against his Lord: and saith that *Danby* and *Brian* 21. Ed. 4, were of the same minde, according to which is *Braston*; and the said Presidents of *Hen. 3.* and the Writ used in *Tempore, R. 2.* besides many other reasons at the Common Law, &c. proving that by use and circumstance things may alter and change their originall nature.

As for example, the services of *Socage tenure* was at the beginning, (as Mr. *Littleton* saith) to Till the Lords Land, &c. And yet now by consent of the Lord, and by continuance of time are turned into money, and other Services in lieu thereof. Even so may it be said of *Coppy-holds*, as long as the *Tenants* themselves be free, though their *Tenure* were at beginning never so bound and base: yet by course of time, they may gain more liberty and freedome, and grow to more estimation and account. Another reason and Rule there is at the Common Law to this intent, that some things there were which in the beginning were but *voluntary*, and yet in the end by continuance became *Compulsory*, as appeareth by the 27. *Aff. pla. 8.* & *Brook tit. prescrip. pla. 49.* That a man that did at the first of his own benevolence repair a high way or a Bridge, by often using to do it, was afterwards compelled therunto *volens nolens.*

Even

Even so it may be said of the *Coppy-holders*, who at the first held but at the free wil of the Lord; yet now by usage and continual granting time out of mind, they have gotten an estate after the Custome, that doing their Services, and behaving themselves well, they cannot by Law or Reason be deprived. Thus much for the allowance of *Coppy-holders* by the Common-Law. Now let us consider the Reputation of them by the Statutes and Parliament Law.

It appeareth by the Statute of 1. Rich. 3. cap. Statutes and 4. & 19. Hen. 7. cap. 16. That a *Coppy-holder* that may dispend twenty six shillings eight pence by the yeare, shall be Empanelled on a Jury, as he that may dispend twenty shillings by theyeare of Free Lands. And by the Statutes of the 2 Ed. 6. cap. 8. the Interests of *Coppy-holders* are reserved, being found by Office after the death of the Kings Tenants, as well as other estates at the Common-Law; and so doth the Statute of Monasteries, 31. Hen. 8. cap. 13. & 1. Ed. 6. cap. 14. preserve *Coppy-holds* from dissolving. And it will seem that *Coppy-holders* are for the good of the common-wealth, and therefore to be maintained, for that some have beeene erected and established by Parliament, which were not demisible by *Coppy* before, as appeareth by the Statutes of 35. H. 8. c. 13. 37. H. 6. c. 2. 6. 2. Ed. 6. cap 12.

What shall be said a Mannour and such a Mannour as will maintain a *Coppy-hold*. A Mannour  
con-

consists in two parts (viz) Demeasnes and Services ; and neither of these two parts hath the name of a Mannour without the other : for as a Messuage of Lands cannot be called Demeasnes without Tenants thereunto belonging, to pay Rents and doe Services So on the other part, though a man have Tenants to pay him Rents, and do him Service , and no Messuage or Lands whereupon to keep his Court, and to receive his Rents and Services, this cannot be called a Mannour, but onely a signiory in grosse. *Fitz. n. brev.*  
*§3. & 8.*

Demeasnes are so called, for that the Lord himself occupieth and manureth them *In son maine Demeasne* ; but all Lands that have been in the Lords own hands, be not called Demeasnes; for all Free-holds and Copy-holds were in his own hands at the beginning. But Demeasnes is that which is now, and time out of mind have been in the Lords hands, or occupation of his Bayliffe or Servants: And in that respect also ancient Copy-hold may be to some purpose called Demeasnes, because every Surrender is in *Manus Domini*, and every grant *extra manus Domini*; the Lord hath a medling with it, and may thereupon keep his Court, and for the most part cut down Timber, and such like : and that is also called Demeasnes, which now is in the Lords hands by any new Escheate or forfeiture. And also the Lands

Lands which are in the hands of the Copy-holders, and such a *Demeasne* as with other Services will make a *Mannour*; though the Lord hath none other demeasnes there in his own hands, nor in the hands of his Bayliffe, or servants, such service, as with a *Demeasne*, shall make a *Mannour* to maintaine. Copy-holds is where a man holdeth Lands or Tenements freely by suit to the Court of the Lord of the *Mannour* within the said Fee: But yet every kind of Service will not make a *Mannour*; for Services are of two kinds, *viz.* That is by *Tenure* and by *Covenant*; Service by *Tenure* is also of two sorts; as if a man at this day giveth his Land in Taile, or leaseth it for Life or Yeares, saving the reversion: here is a Service of *Fealty* incident to this *Tenure*, betwenee the *Donor* or the *Lessor*, and the *Donee* or the *Lessee*. And yet though this be a Service by *Tenure*, yet it is no such Service as will make a *Mannour*. For if a man at this day be seised of twenty Acres of Land, and *Enfeoffeth* nineteen severall persons of nineteen of these Acres, saving the twentieth to himself, and reserveth of every of his *Feoffees* suite of the Court and other Services to be done to this Court, to be held on the twentieth Acre, though the *Feoffments* be by *Deed indented*, or in tayle or of Lives, yet all is void, and availleth not to make a *Mannour*. But it maketh onely a *Tenure in grosse*; for a *Tenure* may by

*Br. Comprif. 31.  
3. H. 8.* divers meanes be created at this day; but a Mannour by no way, by a common person.

A Mannour must be by Prescription, and the Services by continuance, time out of mind.

*Pl. 14 Bro.  
Tit. Tenure 26.* But although a man at this day cannot make a Mannour, yet he may in some sort enlarge a Mannour by adding more Services unto it. 9.

*Aff.* A man feised of a Mannour did give parcell of the same to hold of him by fuit to his Mill within the same Mannour; for this Service the Lord may distrain, and it is there held to be accounted parcell of the Mannour.

In the case of *Menson and Afton.* In like manner a man may by reserving upon a gift, Intayle, or Lease for life, Services in grosse, increas the Services of an ancient *Mannour.* *Signior grant le Demeasnes & services del son Mannour de Norkhelfsey &c. eo extend en autre Tonne per le melior opinion des Justices de Common Bank le grantee, &c. may keep a Court there, and so a Mannour to be created at this Day.*

What shall be said a Mannour or a Tenure in his proper nature or by Common-Law, and what in respect of Usage or Custome to maintain Copyholds.

It is to be noted, that although a Mannour of his proper nature ought to consist of demeasnes and Services, yet in some Cases that may be a Mannour, and maintain Copyholders, and a Court Baron by usage and custome, which otherwise by Common-Law

is

is no Mannour, nor can not so be called, &c.

A man seized of a Manner whereto be divers free-Tenants, divers Copyholders, and divers special Customary Tenants, and the customary Tenants do hold to give attendance on the Free-holders at the Lords Court. All the free Tenants dying saving one, the Lord doth bargain and sell the Manner to an estranger: This is now in respect of the Free Tenants, a Tenure, and no Mannour; in respect of the Copy-holders, both a Manner and Tenure; and in respect of Customary Tenants, neither Manner nor Tenure.

If divers doe hold Lands to dine with the Lord every Sunday in the yeare, this maketh neither good Tenure nor Manner.

But if they hold to wait on the Lord every Sunday at dinner, and to dine with him; this maketh a good service, but no good Tenure.

If divers doe hold Lands by Copy of the Manner of D. and so have done time out of mind, and by the like time there hath been no Free-holders to the said Manner, although this be no Manner in its proper nature, yet by usage it is a good Manner to maintaine Copy-holds.

A man seized of a Manner, which time out of mind hath been called by the name of the Manner of S. and doth demise the same by the name of the Manner of S. this is good.

If a man seized of a Manner, whereto be

six Free-holders, and six Villaines Regardants: The Free-holders die having issue sixe daughters, the Villaines intermarry with them, yet the same is a Mannour, and the Villains thereto regardant.

If a man seised of a Mannour whereto he hath Leet and wreck of the sea by prescription, all the Tenancies Escheate, yet the Leete and the wreck still remain, and it is a Mannour to that purpose.

If divers do hold Land by Prescription to find the Lords mans meat, and hounds meat, when he commeth to hunt the Fox in the said lands; this maketh a good Tenure, but no good Mannour. If divers do hold lands to do suit and Service at the Lords Court. This is most properly such service as maketh a Mannour: but if it be to do suit and Service at the Lords Court, when it pleaseth themselves, this is neither Mannour nor Tenure. If divers do hold lands to repair a Highway within a mile compasse, without the bounds of the Lord of the Mannour, this makes a good Tenure, but no Mannour. But to repair or mend the ways within the Precinct of the Mannour, is good to enlarge the Mannour.

If divers doe hold lands to pray for the prosperous Estate of the Lord and his Heires; this maketh a Tenure, but no good Mannour.

If divers doe hold lands of the Lord to wait upon him at twenty dayes warning, twenty miles.

miles distant from the *Mannour*, this maketh a good Service, but no good *Tenure*. But if it be to wait upon the Lord within the said *Mannor*, by certain space, this maketh both a good *Tenure* and a good *Mannour*.

If divers hold Lands to beat or kill the Lords Tenants that shall do Trespass on the Lords *Demeunes*, this is neither good *Tenure* nor good *Mannour*. But if it be to beat and kill the Kings enemies that shall do so, this maketh both a good *Tenure* and a good *Mannour*.

If divers hold Lands by Prescription to doe Service to the Lord, to his Court of the said *Mannour*, twenty miles distant at a place certain; This is both a good *Tenure* and a good *Mannour*. But if it be to do Service to his Court at another *Mannour*, this without Prescription cannot be service from the first *Mannour*.

If Divers do hold to come to the Lords Court, and there to do nothing, this maketh neither good *Tenure* nor good *Mannour*. But to come to the Court, though not to be of the Homage, yet to affeere *amerciaments*, or make *Certificates* or any other Service to the Lord, this maketh a good *Tenure* and a good *Mannour*.

If any do hold Lands to do Divine Service before the Lord and his Tenants in the Court-house, before the beginning of every Court, this maketh both a good *Tenure* and a good *Mannour*.

what shall be said a good Custome to be able to maintain a Copy hold.

A Custome to make a Copy-hold, must be of necessity in the same Manor where the said Copy-holds are to be granted, *viz.* That the same Lands are, and time out of mind have beene only Demised, and demisable by Copy of Court Role: for otherwise the Lord cannot grant it by Copy, because he cannot begin a Custome at this day. But if it have been by like time granted by Copy, though sithence it came to the Lords hands; yet if the Lord never demise the same by *Free-Deed* nor otherwise, but by Copy, then he may well grant again the same by Copy; for it is neither the person of the Lord, nor the occupation of the Land, that either maketh or marreth the Copy-hold; But onely the usage and manner of Demising the same: for the prescription of a Copy-holder consisteth neither in the Land, nor in the Occupyer, but onely in the usage.

### The Division of Customes.

*viz.* { *Customes,*  
*Prescriptions,*  
*Usage and*  
*Limitation.* }

The division  
of Customes.

These four though they be by some confounded together, and indeed are of great affinitie; yet there be divers differences in their severall natures between them.

*Custome*

*Custome* is where by continuance of time, a Right is obtained concerning divers persons in common.

*Prescription* is where by continuance of time one paticular person obtaineth Right against another.

*Vsage* is by continuance of time the efficient cause of them both.

*Limitation* is where a right may be obtained by reason of a ~~non~~ claime, by the space of a certain number of yeares, differing in the account of time, from custome and prescription.

But what measure of time shall make a Custome, divers have differed in opinion; some judging the same to be according to the computation of years, from the time of K. Hen. 1. untill the Statute of *Merton* cap. 8. which appointeth the limitation in a writ of right: the account of which time unto the said Statute, from the said K. time is 76 years; others have thought a hundred yeares was accounted a Fee simple.

But the true measure thereof according to Master *Littletons* Rule, is where a Custome or Vsage, or other things have been used, so long as mans memory cannot remember the contrary. That is when such matter is pleaded, that no man then in life, hath not heard any thing, nor know any proof to the contrary.

And by this it appeareth that *Customes*, and *Prescriptions*, rest only in the memory of man; and

and Limitation consisteth onely of a certaine time, which hath a certain beginning, and certain ending, and is not directed by mans memory, wherein is meant limitation of time, and not limitation of Estates.

If Lands have been demised by Coppy by the space of 60 yeares, and yet there be some alive, that remembreth the same occupied by Indenture, this is not a good Coppy-hold.

And if Lands have been demised by Coppy but 40. yeares, and there is none alive that can remember the same to be otherwise demised: This is a good Coppy-hold; for the number of yeares makes not the matter, but the memory of man. And it is not 60.80. or 100 years that maketh a Coppyhold or a custome, though it makes a Limitation. But such certain number of yeares makes onely a likely-hood, or presumption of a Prescription; that is, that it commonly happneth not that anymans memory alive, can remember alone such a number of yeares. But if any chance to be alive, that remembreth the contrary, then such prescription must give placeto such proof.

Custome hath certain speciall vertues in it self, which for the more estimation thereof, I will shortly shew according to certain precepts and principles allowed by all Lawes, both by the Law of God, the law of Nature, and the law of Nations, and by the private law of every Countrey: as by the Law of God it is said

said, *Si quis videtur contentiosus esse, non tales Consuetudinem non habemus nec ecclesia Dei;* which prooveth that the Scripture and the Church of God do attribute somewhat to good customes, though not to evill; and by the Law of Nature, *Consuetudo est altera natura.* And by the Law of Nations, *Consuetudo est optima legis interpres.* And by the Lawes of this Realme, Princes at their Coronation are sworn, as well to keep the Custome of this Land, as the Law of this Land, which Law doth attribute so much to custome, that sometimes it is admitted to derogate from the Common Law; for *Consuetudo bona de causa usitata & approbata, privat communem Legem.*

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*Wherof Custome doth consist.*

**C**Ustome although it doth chiefly consist of continuance of time and usage, yet it doth further require seven other necessary proper-  
ties, incident for the maintenance of a good Custome: Which are these.

First, It must be reasonable, as it appeareth 2. Ed. 4. 24.

Secondly, it must be certain, as appears 3. Ed. 3. 13. Ed. 3. 4. *Dum fuit infra etatem. 3. 14. Ed. 3. 4. 14. H. 4.*

Thirdly, it must be according to common right. 4. Ed. 3. 4.

C

Fourthly,

4. Fourthly, it must be on good consideration  
 5. Hen. 7. 9. Bro. tit. prescript. pl. 57. 22. Aft  
 pl. 58. *usage* and *Custome* doone  
 5. Fifthly, it must be compulsory. 42. Ed. 3.  
 AVOW. 66.  
 6. Sixthly, it must be without prejudice to the  
 King. 3. Hen. 6. 13. Prescription. Tit. 1. 22. Ed.  
 3. Prescription 40.  
 7. Seventhly, it must be to his profit that claim-  
 eth the same. 31. Ed. 3. Prescription 40 & 28.  
 Usage is the efficient cause both of Custom and  
 Prescription; for without Usage, there can  
 be neither custome or Prescription; for even as  
 the mind is to man, so is usage to custome. And  
 as you see there be divers varieties of minds in  
 men, so are there many varieties of *customes*; as  
 you see varieties of Countries, and yet all men  
 perfect, and all *customes* perfect: some say that  
 men have their minds affected according to  
 the constitution of their bodies: And so have  
 Countries their *Customes*, according to the  
 constitution of the places; as in *Kent*, and in  
*North-Wales*, because those Countries have  
 been most subject to foreign invasions, (that  
 every man there, may be of power for resis-  
 tance,) the inheritance for the most part de-  
 scends in *Curvel kind* (viz.) to every brother  
 alike; but in the middle parts of the Re却  
 for whose government *least equality is best*,  
 the inheritance wholly descendeth to the  
 eldest brother: And in *Borough English* which  
 is

is in divers *Boroughs*, because their substance commonly is lands; and in such Townes, lands may be better preserved then goods; therefore their youngest *sons* shall only have their lands: and as it is in those great parts of the Realme, so it is in divers private parts and Mannours, and divers private and speciall *Custome*, as some Mannours have *Copy-hold* of inheritance, some for life or lives: in some Mannour the *Copy-holders* surrender in one manner, and in some in another sort: In some the *Fine* is attinable: and in some certain, *et sic in similibus.*

The usage of every *Custome* doth not rest to be yearly, daily, or continually used, but as the equality and the nature of the thing whereof the *Custome* is, doth require, as custome *huryas* when they fall of *Sheats* and *Folage* in their season, or *Custome* of *Eftovers* in their time, and for *Copyholders* whose *Fines* are certain, yet at sometime to pay a greater *Fine* than at another, and these are good *Customs* though they cannot be used at all times; for *Customs* may be sometimes used, sometimes not used, sometimes altered, and sometimes not, and therefore in some you may see there is *usurpation*, *Abuse*, and *Interufer*.

*Vser* is when according to time and occasion a *custome* is used.

Non *Vser* is when for want of time and occasion, or through negligence, or forgetfulness

2. *Custome is not used.*

Abuser is that, when *custome* is ill used; for as Vser doth nourish *custome*, so doth Abuser destroy a *custome*; and yet in some cases a *custome* may be sometimes used in one sort, and sometimes in another; and yet a good *custome*, if there be good considerations of the exchanging thereof at times, and this I call Interuser.

If there be a *Coppy-hold*, of an ancient Demesne, and this Land is forfeited to the Lord by waste, and thereupon a seizure awarded thereof, and yet the Lord doth suffer the Tenant still to occupy it, by the space of 20 years, without receiving any Rent for the same, and after grants the said land to the Tenant by *copy*: this Grant is good, and a good Vser of the *Coppy-hold*. But if after the said *Seasure* awarded, an *Estranger* had entred, and disseised him of his land, and made a *Feoffment* in *Fee* thereof; and after the Lord re-entred, and grants the same again by *Coppy* unto the first Tenant, this Grant is not good, by reason of the Vser of this land.

If the Lord have used at the admission of his *coppy-hold* *Tenants* sometime to take for a Fine two-pence, or sometimes four-pence for an Acre, sometimes twelve pence an Acre, this Vser is so uncertain, that it maketh the fine arbitrable at the Lords will.

If the Lord of a Manner have used time out of mind

mind to admit his *copy-hold* *Tenants* without Fine, this usage shall bind the Lord, as well as a Fine certain.

If the Lord have used to have certain work-days of his *Tenants*, and that hath not beene used by the space of twenty years last past; yet that *non-user* is no discharge to the *Tenants*, so hat there be any in life that can remember the same.

If the *Tenants* have used when they sow their lands, to pay the Lord Rent-corn, and when it lyeth in pasture to pay their Reats in money, this is a good *Inter-user*.

If the *Tenants* have used to pay to their Lord every fourth year a double Rent, and every sixth yeare an half Rent, this is a good *Inter-user*.

If the *Tenants* have used to have Common of Pasture in their Lords Woods, for their Horse-cattell, and they put in their Neat-cattell, and destroy the Woods, this is an *Abuser*. But it is but Fineable, and no forfeiture of the *Common*, which they might have rightfully used: No more then if they have Common for a certain number of beasts in the Lords Soyle, and they will exceed the number; this abuse by their surcharging, is onely fineable, and no Forfeiture.

If a man have a Market to be used onerday in a week, the *non user* thereof is not forfeiture. And if a man have a market to be used on the *Friday*, and he keepeth the same *Friday* and

Munday, the Mis-User of the Monday is no  
forfeiture of the Fryday.

If a man have a Fair to be used two dayes,  
and he keeps it three dayes, this abuse is a for-  
feiture.

If a man have a Faire for one day, and he will  
keep it two dayes, and that is presented to the  
*Parochquer*; if the party being called by *Processe*,  
doth claim both dayes by Patent, upon sight  
whereof it appeares he ought to have but one  
day by his Patent, and the other by prescrip-  
tion be found against him, and that Day lost,  
yet he shall enjoy the other day.

If a man prescribe to have a Faire yearly upon  
pon *Berchelme* day, and if the same do fall  
out on the Sunday, then to keep the same the  
next day following, this is a good Prescrip-  
tion.

If the King do grant to the Citizens of  
Norwich the *Franchises* and *Liberties* that London  
hath, and the *Franchises* and *Liberties* that  
Southampton hath; if the Citizens of Norwich  
do abuse one of these *Liberties* that London  
hath, this is a forfeiture of all those *Libe-  
ties* that London hath, and of no other. But if  
the King doth incorporate a Towne, and give  
them by the same Patent Speciall *Franchises*  
and *Liberties*, the abuse of the one of these is  
a forfeiture of them all.

*That*  
is, that if a man do abuse one of these

That every Cusome must be reasonable; and  
what shall be said of reasonable Cusome.

Every good Cusome is grounded upon  
good Reason, and that shall be said in Reason  
a good Cusome, that in reason is a good  
Law; for Law and Cusome be of that affinity, as  
both doth allow like Reason, and both do for-  
bid like inconveniences. And the fittall effect  
of both is to discouer & to discerne every mans  
true right, and to give to every man that which  
is his own. For although Cusome in some ca-  
ses differ from Law, and doth admit ex-  
ecution of some Acts without some cere-  
monies and cireumstances required by the  
Law: yet the end and effect of Cusome is to  
maine in the like reason that Law doth, and  
to avoid the like inconveniences.

And therefore if a Lord will prescribe to  
have such a Cusome within his Mannour,  
that if the Beatis of any of his Tenants do him  
any Trespass upon any of his Demesnes, and  
there be taken dommage feasant, that then he  
may detain them untill the owner shall sati-  
fie him for his harmes, as himself shal require.  
This is no reasonable Cusome that he shoulde  
be his own judge. But to prescribe, that if any  
of the Copy-holders beatis Trespass, &c.  
and the same be presented at his Court, that  
there should be a forfeiture of his Copy-hold,  
this may be called a reasonable Cusome.

If

If Tenants of a Mannour will Prescribe to hold without paying any Rents or Services for their Copy-holds, this is no good Custome. But to prescribeto hold by Fealty for all manner of Services, is good and reasonable.

If the Lord will Prescribe never to hold a Court, but when it pleaseh himselfe, this is not good. But to Prescribe never to hold a Court, for the speciall good of any one Tenant, except the same Tenant will pay him a fine for the same, is good and allowable.

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That every Custome ought to be certain; and what shall be said a Custome certain.

There is nothing more required in all Laws and Customes then certainty, for incertainty in all Cases makerh confusion, and therefore Law and Custome do also agree in this point, that without some kinde of certainty, neither Law nor Custome can be good: for in divers cases where one thing may be taken to divers intents, and the circumstances of the case such as to which intent the thing was done, cannot be certainly judged, there the same thing so doubtfully done, shall to all purposes be judged void. And incertainty of Customes and Customary caules, grows chiefly three manner of wayes. That is to say, sometimes of the incertainty of the Persons: Sometimes

the

the incertainty of the things, and sometimes the incertainty of the cause : and in some of these cases, though there be at first a Semblance of incertainty, yet by circumstances and Contingents, the Incertainties may be turned into Certainties. As if the Lord of the Mannour wil prescribe, that whensoever any of his Copyholders dye without Heirs, that one other of the Copy-holders of the same Mannor shall Till the Land for the yeare following ; This is no good Custome, because the intent neither is, nor can be certain, which of the Tenants shall perform this Service.

But if the *Custome* be, that if a Copyholder dye without Heire, that then the eldest Tenant of that name, of the said Mannour, shall have this Land ; this is a good *Custome* and containeth in it self sufficient certainty.

If a Copy-holder do Surrender two Acres of Land into the Lords hand, the one to the use of *J. S.* and the other to the use of *J. N.* and doth not name in Certainty who shal have the one Acre, and who shall have the other, the limitation of this Use is void, for this incertainty.

If a Copy-hold be surrendred to the use of *J. S.* and his Heires, untill he shall marry *A. G.* and after the said marriage, then to the use of them two in Tail speciall, if after they do marry, then is the Surrender to them in Tail, and till then, to him in Fee.

If the Lord will prescribe to have of his Copy-holders in the time of Peace two pence an Acre of Rent, and in the time of Warre four pence an Acre of Rent, this is good Prescription, because there is a good consideration of the cause of this Incertainty: But to pay unto the Lord two pence an Acre Rent when he will, and 4.d. an Acre Rent when he will, this is no good Prescription, because there is neither good reason, nor good consideration hereof nor can it ever be reduced into any Certainty.

*That Custome must be according to Common Rights: And what shall be said such a Custome, and what not.*

42. E. 3. 4.  
Avowry 66. 14.  
Hen 4. Avowry  
Fitz. 60.

Customes and Prescriptions must bee according to common Rights; that is to prescribe to have such things as is their right and reason to have, and not by custome of Prescription to claim things by way of extortion, or thereby to exact Fines or other things of his Tenant without good cause, or consideration.

If the Lord will prescribe to have of every of his Copy-holders, for every Court that shall be kept upon the Mannour, a certaine sume of money; this is no prescription according to common right, because he ought for Justice sake to do it gratis.

And

And so it is if the Sheriff will prescribe to have a certain Fee, for keeping his Turn, this is not a good Prescription.

But if the Lord will prescribe to have a certain Fee of his Tenants for any extraordinary Court purchased only for the benefit of one Tenant, as for one Tenant to take his Copyhold, or such like, this is a good prescription according to the common right.

If the Lord will have any of his Tenants that shall commit a Pound Breach, a hundred shillings for a Fine, this is a good Prescription, but to challenge of every stranger that shal commit a Pound Breach a hundred shillings, this is no good Prescription.

If the Lord will Prescribe that every of his Copy-holders within his Mannour that shall marry his Daughter without licence shall pay a Fine to the Lord; this is no good Prescription according to common right.

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That a Custome must be upon a good Consideration, and what shall be said such a Custome, and what not.

Consideration hath a great effect in all Laws and Customes, and hath as great an operation, as any one thing belonging to the Law; for in most causes it onely guideth and directeth Rights, Properties, Vises and Estates,

sometimes according to the limitation, and sometimes contrary to the limitation, as well in cases of *Custome*, as in cases of Common Law; for Consideration is the beginning of all Custom, the ground of all Usages, the reason of all Rights, and the cause of all Duties: For without Consideration no Custom can have continuance; nothing is wrought by any Conveyance, no interest transferred, no right removed, no property changed, nor duty accrued. As if the Lord of a Mannour will prescribe, that whosoever passeth the Kings high way, which lyeth through his Mannour, shall pay to the Lord of the Mannour twelve pence for his passage; this prescription is not upon good Consideration: But if he prescribe to have a penny of every one that passeth over such a Bridge, which the Lord of the Mannour doth use to repair, this is a good Prescription, and upon good consideration. If the Lord will prescribe to have a Fine at the marriage of his Copy-hold Tenants, in which the Custom doth not admit the husband to be Tenant by courtesie, nor the Wife to be Tenant in Dowre, or have her Widdows estate; the prescription of such a Fine is not good: But in such Mannour where the Custom doth admit such particular estates, there a prescription for a Fine at the marriage of his Copy-holders, is upon good consideration.

If

If a **Coppy-holder** surrenders his Land to the use of I. S. so long as I. S. shall serve him in such an office; if I. S. refuse to serve, his estate doth cease.

If a **Coppy-holder** doth surrender his Land to the use of a stranger, in consideration that the same stranger shall marry his daughter before such a day: if the marriage succeeds not, the stranger takes nothing by the Surrender: But if the Surrender be in consideration that the stranger shall pay such a sum of money, at such a day; though the money be not payed, yet the Surrender standeth good.

If the **Coppy-holder** in consideration of twenty pounds to be paid by I. S. doth make a Surrender of his Land to N. R. this Surrender is to the use of I. S. because of the consideration expressed in the Coppy, and not to the use of N. R. But if in the Coppy the use be expressed to N. R. and no consideration mentioned, the use expressed shall stand against any Consideration to be averred.

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*That a Custome must be Compulsary; and what shall be said a Custome, and what not.*

**C**Ustome or Law must be *Compulsary*, and not at the liberty of a man, whether he will perform it or not; for then it were of no force; for all **Customes** and **Lawes** have their effect.

effect in two points. That is, in bidding that which is just, and in forbidding the contrary: So that the Lawes and Customes are refrainers of Liberties, and do demand execution of Justice; not that every man should have or do what they would; but that which by Justice they ought, whereunto by duty of Law and Custome, he is compellable; for otherwise it were Voluntary in him, which were to the infringing the Law and good order: As the Poet,

*Oderunt peccare boni virtutis amore.  
Oderunt peccare mali formidine pæna.*

If the Lord will prescribe that every of his Tenants shall give him ten shillings a moneth, to bear charges in time of Warre; this is no good Prescription. But to prescribe that they ought to pay ten shillings a moneth, &c. this is good. For payment is Compulsary, but gift is Voluntary.

If a Copy-holder do Surrender his Land to the use of I.S. so that the said I.S. do pay him twenty pounds at such a day. If I.S. please to pay the same, this is an absolute Surrender, and not conditionall, because the payment is compulsary.

But many Customes there are which at the beginning were voluntary, and now by continuance are grown compulsary. According to the Civil Law, *Qua iniisso fuerunt voluntatis,*

*ex post facto fuerunt necessitatis*; which also agreeeth with the Common Law in many cases, as I have partly touched before.

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*That a Custome must be without prejudice to the King, and by what prescription the King shall be bound, and by what not.*

**T**HE King hath that Prerogative over his subjects, that he is not tyed to time as a common person is; for though a common person may *lose* his right by *non clame* within a certain time, the Kings right is still to be preserved; for *Nulum tempus occurrit Regi*. Yet in speciall cases where the King is not Intituled against such prescription by matter of Record, these such Customes shall bind the King.

As for example, if a Copyy-holder prescribeth that he holdeth of the King by Copyy, this is good, and by Fine certain, and not arbitrable: to have Waife and Strayes, and Wreck (but not *Catalla, Felonum aut fugitiorum*;) and *Vilagatorum* without Charters.

The Kings *Advowson* shall never fall into lapse for not presenting within sixe Moneths.

*That*

*That a Custome ought to consist of perdurable-  
ness of Estate, and of an  
able Capacity.*

**T**O those former parts whereupon I have declared a good Custome to consist, may be added two other parts; *viz.* That he which will claim by Custome, must have a sufficient and perdurable estate to prescribe; and also in his own right, or in some others, a sufficient ability or capacity to prescribe.

Touching the first it is to be understood that he which will prescribe, must have a certain and undefeazable estate, and not otherwise. As if a *Tenant at Will*, or at *Sufferance*, after he hath occupied the Land for ten years will prescribe to have the same for ten years more, this is not good. But a *Tenant at Will* after the Custome, although he came in at the first by the Lords Will, yet doing and paying that which he ought, he may prescribe to hold the Land whether the Lord will or no: and although a *Copyholder* may prescribe in this forme against his Lord, yet against an *Estranger*, for a common or such like kind of profit, he cannot prescribe, but in the right of the Lord: neither yet can a *Tenant for life*, or for yeares, prescribe in the right of their own Estate onely, becaule it lacketh continuance to make a *Custom or Prescription* (except) in some cases

cases of necessity, the Lord of a *Mannour*, or of a patronage for yeares or life, may grant a Coppy in perpetuity or presentation for a longer time than the estate of the Grantor doth continue, and this is admitted *causa necessitatis*, and not *jure prescriptionis*.

To the second, Capacity must be in himself that doth prescribe; which ability and Capacity must consist in the person of him that doth prescribe: For as *prescription* may be sometimes in respect of estate, *Mannour, Lands or Offices*; so may *prescription* sometimes be in respect of person, which *person* is not to be understood of a private person, but of a body Politick; not that many *persons* may prescribe, except the same be incorporate; and to prescribe in respect of their incorporate capacity, and not in respect of their private capacity. As if the Inhabitants of *Dale* will prescribe to have *Common* in the *Soyl of S.* this is no good *prescription*, for that they be not incorporate; they must prescribe that *H.* Lord of the *Mannour of Dale*, for him and his *Tenants within the said Mannour*, have used to have *Common* within the said *Soyle*: so it is for *Coppy-holders*; for they must prescribe in the name of their Lord in such a case.

If a man prescribe that he and his *Ancestors* have had such an *Annuity*, this is not good: But if a *Bishop* do prescribe that he and his *Predecessors* have had such an *Annuity*, this is good.

The pleading of *Prescription* must be used in form of Law, as other matters that are pleadable, and form must be used (likewise) in pleading of *Coppy-holds*, and other *Customary Titles* for avoiding of confusion and discord, as well as in other cases of the Common Law, the form of pleading *prescription* doth differ as the quality of the thing, whereof *prescription* is made, and sometimes doth differ, as the persons do differ which make the *prescription*: As if a *Coppy-holder* makes his Title to his Land by *prescription*, he must plead that the same Land is and hath been time out of mind *demised* and *demiseable*, by the *Coppy of Court-sole*, according to the custome of the *Mannour* whereof it is holden.

If two men as younger brethren will make their Title to Land in *Gavell kind*, they must say, that the same Land is of the *Tenure* and *Nature* of *Gavell kind*, which time out of mind have been parted and partable between *Heires* males.

So if the youngest Sonne maketh his Title to Land in *Borough English*, he must plead, that time out of mind, the *Customs* of the said *Mannour* hath been, that when, or at what time soever a *Coppyholder* dyeth *seised* of any *Coppy-hold* Lands in the same *Mannour*, having ditterers Sonnes, that the same hath used *sure Hierarchy*, to descend unto the youngest Sonne, &c.

And

And as the forme doth differ in the things whereof the *prescription* is commonly made, so doth it differ as the persons do differ, He which doth prescribe as a private person, shall prescribe in him and his Ancestors whose estate he hath. An incorporate person in him and his Predecessors. A Lord of a *Mannour* in him and them which were Lords of that *Mannour*.

A Sheriff, in him and those which have been Sheriffs of the same County.

A Steward of a *Mannour*, in him and those which have been Stewards there.

A Free-holder, in him and them which have been Freeholders to the said Lord.

A Copy-holder, shall prescribe against an *Estranger*, that the Lord of the *Mannour*, for him and his Tenants at Will have used the like, &c.

*What Necessity a Court Baron is of, whereof it doth consist, how it is defined, and what shall be said a sufficient Court Role to make a Copy-hold.*

Court Baron  
consisteth of  
four special parts, viz. Every *Mannour* hath a Court Baron incident to it, of common right, and common necessity, and this Court Baron consisteth of four special parts, *viz.* the Lord, the Steward, the Tenants, and the Bayliffe.

A Court Baron is defined to be an assembly

of these parts together, within the said Mannour to take Councell, Care and enquire of causes concerning the same Mannour: to see justice duly executed, the acts and ordinances there done to be recorded in the Roles of the same Court, which Roles are the Evidence of all ordinances, duties, customes, and conveyances between the Lord and Tenants of the said Mannour, and are to be entred by the Steward or an Officer indifferent between the Lord and his Tenants, and the same Roles to remain with the Lord, thereby to know his Tenants, his Rents, and his Fines, his Customes, and his Services.

And the particular Grant of every Coppys-hold, to be copyed out of the Roles, the Coppies thereof to be delivered to every particular Tenant, neither can they make any other Title to their said Tenements, but by their said Coppy.

If the Lord of the Mannour having Coppy-hold Lands surrendred into his hands, will in the presence of his Tenants out of the Court, grant the same to another, and the Steward entereth the same into the Court-Book, and maketh thereof a Coppy to the Grantee, and the Lord dye before the next Court, this is no good Coppy to hold the Land.

But if the same Surrender and Grant bee presented at the next Court, in the life of the Lord, and the Grantee admitted Tenant, and a Coppy made to him, this is a good Coppy.

If the Lord of a Mannour having ancient Coppy-hold.

py-hold in his hands, will by a Deed of Feof-  
ment, or by a Fine grant this Land to one to  
hold at the will of the Lord, according to the  
Custome, yet this cannot make a good Cop-  
py-hold.

If the Lord in open Court doth grant a Cop-  
py-hold Land, and the Steward maketh no En-  
try therof in the Court Roles; this is not good,  
though it be never so publicquely done; nor no  
collaterall proof can make it good.

But if the Tenant have no Copy made unto  
him out of the Role, or if he lose his Copy,  
yet the Role is still a sufficient Title for his Cop-  
pyhold: if the Role be also lost, yet it seemeth  
that by proof he can make this good.

If Ordinances or By-Lawes bee newly made,  
and Recorded in the Roles of the Court, if the  
Court Roles be lost, the By-Lawes bee set at li-  
berty; yet if there bee any ancient Customes or  
Priviledges by *prescriptions* not entred in the  
Roles, &c. though the Roles bee lost, yet they  
remayn good;

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*Who shall be sayd such a Lord of a Man-  
nour as hath power to grant a Copyhold.*

A Lord to grant or allow a Copyhold, must  
be such a one as by Littletons Definition is  
seised of a Mannour, so that he must bee in pos-  
session at the time of the Grant; for although

he have good right and title, yet if hee bee not in possession of the Mannour, it will not serve: and on the other side, if hee bee in possession of the Mannour, though he have neither right nor title thereunto, yet in many Cases the Grant and Allowance of such a Coppy is good as *Domini* *minus de facto, sed non de jure.* And in some Cases a Coppyhold shall bee adjudged good, according to the largenesse of the state of the Lord that granted the same, and in some Cases shall continue good for a longer time than the estate of the Grantor was at the time of the Grant. But that is to be understood in case of necessity, otherwise it will not be allowed.

If a man seised of a Mannour, in which are divers Coppy-holds demisable for Lives, is dis-seised, and the disseisor granteth a Coppyhold, being voyd, for three Lives; this is not good to binde the disseisor; otherwise it is of a Coppy hold of Inheritance, because it is necessary to admit the next Heire.

If a man have a Title to enter into a Mannour for a condition broken, and he granteth a Coppyhold of the same Mannour (being voyd) at a Court-Baron, this is a good Grant; for the keeping of the Court amounteth to an entry into the Mannour.

A man seised of a Mannour for life, whereunto be Coppyholds of Inheritance belonging, and one Coppyholder surrendreth to the Vice of a Stranger in Fee, the Lord may grant this

this in Fee, and this Grant shall binde him in the reversion; but the Copy-holds being demisable for lives, if is otherwise; for then he cannot upon Surrender grant the same, longer then the life of the Grantor. But if the Lord of a Manour for yeares, or during the minority of a Ward, of which the Copy-holds are demisable for three lives successively, and not survivingly; in this case if the Copholder dyeth, the Lord may grant the same; being void for three lives at his pleasure, and this shall bind him in the Reversion, or the Heire at his full age.

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*Who shall be said such a Tenant as may  
be a Copy-holder.*

**A**lthough there seemeth some shew of difference between Coppy-holders and Customary Tenants, yet differ not they so much in nature, as in name; for although some be called Coppyholders, some Customary, some Tenants by the Virg, some base Tenants, some bound Tenants, and some by one name, and some by another; yet they do all agree in substance and kind of Tenure, though they differ in some ceremonies and kind of serving, and therefore the name is not the matter, but the Tenure.

*He shall be said a person sufficient to be a  
Copy-*

Infant feme  
Covert. *Lug. a.*  
tick Nemy 13.  
Eli 1302. & 303

Coppy-holder, who is of himself able, or by another to do the service of a Coppy-holder; as an infant may be a Coppy-holder for his Gardain, and Prochein any may do the service; so may a feme Covert, and her husband shall do the service: But a lunatick, or Ideot cannot be a Coppy-holder, because they cannot do the service themselves, nor depute any other: and the Lord shall retain the Coppy-hold of an Ideot and not the Queen.

A Bond-man or alien born may be a *Coppyholder*, and the King or Lord cannot seise the same.

But a man cannot be a *Coppy-holder* unto a Mannaour whereof he himself is Lord, although he be but *Dominus pro termino annorum*, or in *Jure Vxoris*.

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*What shall be said such Lands or other things as are demisable by Coppy, and may be holden by Coppy.*

IT may be said of *Coppy-hold* Lands, as is aforesaid of the Tenants; they may differ in name, but not in nature: as some are called *Coppy-held* Lands, some *Customary* Lands, some bound Lands, some base Lands, some ancient Lands, some demesne Lands, some encrease Lands, some Mollends, some waste Lands, some work Lands, some loose Lands, and some Veirg Lands.

And although *Coppy-hold* Lands be specially

ally so called, because it is holden by Coppy of Court Role, Customary Lands because of some speciall Custom; Bond Lands because of the Bond Tenure, Base Lands because of Base Tenure, Ancient Lands because of the old Demise, Demeasne Lands, because of its new Demise, and late being in the hands of the Lord of the Mannour; Increased Lands, because it is late purchased, and laid to the Mannour: Mollands, because it is holden by easie Rents, or no Rents at all: Waste Land, because it hath been lately improved out of the waste of the Mannour: Work Lands, such as hath common appendant belonging to it: Lose Land, because it is holden by uncertainty of Rents; and Veirg Land, because it is holden by the Veirge: Yet all the said Lands are holden in one generall kinde, that is by Custom, and continuance of time; and the diversity of their names doth not alter the nature of their Tenure.

It seemeth by *Litleton*, that onely Lands and Tenements are demisable by Coppy. And therefore if the Lord of a Mannor will grant the Rent charge, or the Office of Stewardship, or Bayly-wick of his Mannour, by Coppy, or a Common in grosse by Coppy, these be not good Grants, because they lie not in Tenure, and also because the *Custome* doth not extend unto them, but common appendant to a Tenement or Coppy. hold Lands may be demised with the Tenement by Coppy.

Demeaine Lands which within time of me-  
mory have been occupied by the Lord himself, or  
his Farmor, is not good to be granted by Coppy,  
because of the newnesse of the Grant; yet by  
continuance of time it may be good Coppy  
hold, when the memory of the contrary is worn  
away, as hath been said before. Neither can  
the Lord that granted such a Coppy, put out his  
Coppy-holder during his life that granted the  
same, because he should not be conceived to dis-  
able his own Grant. If a Coppy-holder do  
surrender his Coppy-hold into the Lords hands,  
merely to the use of the Lord, I doubt whe-  
ther the Lord may grant this again by Coppy,  
as he may where it comes unto him by forci-  
ture, or by escheat, because it is made parcell  
in Demeaine by his own acceptance, and not  
by the Act of the Law. *Quare.*

Note that neither the Statute of *West 2. de*  
*donis conditionalibus*, nor any other Statute,  
that hath not Coppy-holds named in it, doth  
extend to Coppy-hold Lands, as the Statute  
*Staple 27. Ed. 3.* nor the Statute of *Heresie*  
*2. Hen. 5.* nor the Statute of *Wills 32. Hen-*  
*ry the eight*, nor the Statute of *Limitation*,  
made the same year, as is now taken contrary to  
*Master Brook in novel cases. 426.*

But though a gift in Tail of a Coppy-holder,  
be not contained in the same Statute of *West*  
the second: Yet I think in such Mannour, where  
time out of mind they have used to make gifts

in Taile of Copy-hold Lands, there such gifts be good at this day, and they may make Protestation in the nature of any Writ, as appear-  
eth by *Littleton*.

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*What shall be said a good Surrender.*

**A**S in the conveying of Free Lands there is required some ceremony and publick notice, so is there in the assuring of Copyholds necessarily some publick fact to be done therein, which is the Surrender. In which ceremony there is contained two effects, the one what is surrendered and to whose use; the other that it be done with the Lords goodwill, and for what cause it is surrendered into his hands. And although there be divers wayes of Surrender in severall Mannours, as within some Mannours to surrender by the hand of another Copyholder, and in some other to surrender to the Stewards hands, in some to the Bayliffes hands, and some by giving a yard to the Steward, in some by giving his hand, or his glove, which be outward signes of his intent: Yet in all these kinds the words of Surrender must not be divers, but one, and to one effect, and must be either words of Surrender expressed, or words of Surrender implied; and therefore if a Copy holder will bargain and sell his Land to *I.S.* and this is found by the Homage, and *I.S.* prayeth to be admitt-

ted Tenant, yet the Heire of the Copyholder shall avoid the admission, because of the insufficiency of the Surrender, taking by the words of Bargain and Sale, and not by words of Surrender *op*s*ig*r*. Dier 3. Eliz. Folio 251. Lou ill dit. que relees ne vault inure Come une surrender.*

If a Copyholder cometh into the Court, and desireth his Lord to admit his Sonne to be Tenant in his Fathers place, this seemeth a good Surrender to the use of the Sonne.

If a Copyholder will in the presence of other Copyholders of the same Mannour, say that he is content to surrender his Copyhold Lands to the use of *I. s.* this is no good Surrender: but if he saith he doth surrender into the hands of the Lord to the use of *I. s.* if the Lord will thereunto agree, this is a good Surrender, whether the Lord will or not.

If the Tenant will resigne his interest in the Court, into the Lords hands, therewithall for the *Lord* to do his will, this is a good Surrender if it be accepted.

If a Copyholder will say he will be no longer the *Lords* Tenant, though these words be recorded, yet this is no good Surrender.

If a Copyholder for life, take a new Estate for life by Copy, this is a surrender of his first Estate.

But if a Copyholder for life will take a *Lease* of the same by Indenture for life, this is not a good surrender of the Copy-hold. *Quare.*

If

If a Copyholder cometh to the *Lord*, & telleth him, that for the preferment of his Son, in marriage, with such a mans daughter, his will is, to give his *Land* presently to his Sonne, and desirereth the *Lord* that he would be contented therewith, this is no good surrender.

But if he had said these words in the *Lord's* Court, and the same recorded, or found by Homage as a Surrender, and so presented, then this had been a good Surrender without any other words of Surrender.

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*That a Copyholder must be admitted  
Tenant; and what shall be said a  
good admittance of a  
Copyholder.*

**I**F a Copyhold descend unto a married woman, and her husband take the profits thereof, and suffer a Court day to passe without admittance of his Wife, and then the Wife dyes, the Husband shall not be Tenant by the courtesie; but in the 12. *Eliz. Dier* 291. 292. it seemeth that the contrary should be the better opinion.

An entry before admittance is no forfeiture, 10. *Hen. 8. Dier.* without an especiall Cusome pleaded, but the 41. 16. *there.* Heire may make a forfeiture for non payment *Grenstes calc.* of the Rent, as the Cusome was there pleaded before admittance.

If

By Sergeant  
Walmsley.  
12. 16. 291.  
292.

If a Copyhold be surrendered unto the use of a stranger upon condition, and the condition be broken, the party that made the Surrender may reenter, and be a Copyholder to all intents, without any new admission; for he did depart with the *Land* upon a condition.

Also if a Surrender of a Copyhold be made to the use of a stranger for life, and the *Lord* makes a Grant thereof to the same stranger in Fee; this shall not bind the Heire of the Tenant, but that he may enter after the death of the Grantee; for he took the *Land* by the Surrender, and not by the Grant made by the *Lord*; for the *Lord* is but an instrument for the conveyance of the *Land*; for if I make a Surrender unto the *Lord* *ex intestacione*, that he shall grant Over unto such a man, if the *Lord* will not grant the same, I may then reenter, but the stranger hath no meanes to enforce the *Lord* to grant the same over unto him, but may maintain Trespass against the *Lord*, if he doth suffer me to reenter, and this is the Opinion at this day.

The *Lord* of a Mannour hath that Prerogative in his *Copyholds*, that no stranger can be his Tenant thereof without his speciall assent, and admissions; and for that cause a Copyhold shall not be liable to any executions of Statutes, or Recognizances, neither shall be *ffers*, in debt or *Formidons*, neither is contained in any the Statutes afore named, for if it were, then should the

the Lord be forced to have a Copyholder whether he would or no, which is against the nature of a Copyhold.

And therefore a Stranger can never enter, though a Surrender made to his use be accepted, except he be admitted Tenant; but otherwise of the Heire, for hee may enter and take the profits before the Admittance after the death of his Father.

Admittance may be three manner of wayes; an Expressie Admission, by the words entred into the Court Role, *viz. unde admissus est Tenens;* or by Acceptance, or Implication, as if the Lord will accept the Rent by the hands of a Stranger: Thirdly, by admitting one Copyholder, in some Cases the Lord shall admit another by Implication to some purposes. And to these three may be added a fourth, which is by the Entry of the Sonne after the death of his Father; and the Tenant in Dower after the death of her Husband, which is lawfull without Admission, till the next Court, and then they must pray to be admitted, &c.

If a Copyholder do surrender his Land to the use of I. S. and the Lord doth grant the same to I. S. accordingly, and thereupon hee Esters, yet he is no good Copyholder, till he be admitted. But if I. S. appeareth at the Lords Court, and passeth on the Lords Homage, or the Lord accepts his Rent or his Fine for the same Copyhold, now he is become a good Copyholder without any further Admission.

If

If a Copyholder surrendreth his *Land* to the use of *I. S.* for life, the Remaynder to the use of *R. N.* for life, and the *Lord* granteth the same accordingly, and admitteth *I. S.* it seemeth this is a good Admission to *R. N.* that is the Remaynder.

In Trespass  
by Hagger a-  
gainst Felfions  
Rep. Browns  
Case.

A Copyholder in Fee dyeth seised, his heire may make a Surrender to the use of a Stranger without Admision: *quare.* But if a Copyholder surrendreth to the use of *I. S.* this *I. S.* cannot surrender to the use of a Stranger, without being first admitted himselfe.

If a Copyholder surrendreth all to the use of two joynly, and they are admitted, if the one of them dyeth, the Survivor needeth not to be admitted again for the moiety: But if a Copyholder having issue two daughters, and they are admitted, and then the one of them dieth, the other must needs be admitted for the other moiety, for she takes the same by descent.

*D' heire dun Copy-holder poit prender les profits  
evera accion de Trespas et sera possesto frantz du-  
ne Copy hold, devant ascune admittance 12. Et  
Sig. Dier 291. poit faire leases per ans, Denby et  
Bullocks ca.*

*What shall be said a forfeiture of unto  
a Copy. hold.*

THE Tenant by Copy standeth bound by his Tenure to the Lord, that if he doth any thing to the Lords disinheritance, or in some cases if he doth transgresse the duty of a good Tenant, he shall forfeit his Copyhold: But because all offences are not equal, so likewise there are degrees of punishment; for there is a difference between offences done wittingly, and willingly, and faults ignorantly and unwillingly committed.

And therefore some offences are forfeitures *ipso facto*, some are only forfeitures when they are presented and not before, and some are only fineable.

Forfeitures *ipso facto* are offences that lye in mis-facons, and be apparent forfeitures; Forfeitures that lye in *Non facons*, are where the offence is not apparent, but affirmatively to be proved without presentment.

Offences Fineable are offences of contempt, Fineable and not of disinheritance.

As if a Copyholder will in the presence, and sitting of the Court Baron, say that the Lord doth extort and exact un-due Rents, and Services of his Tenants, or such other unreverend words; this is only Fineable. But if he will then and there say, being called

forth to be sworn of his Homage, that he is none of his Lord's Tenant, this maketh a Forfeiture of his Copyhold.

But if he will there say, that he will shortly devise a way that he will be no longer any of the Lord's Copyholders, this is neither cause of Forfeiture, nor Fine.

If a Copyholder ~~seditio~~ Curia, do strike another Copyholder or any other stranger, this is onely Fineable, and maketh no Forfeiture.

If the Steward sheweth forth a Court Role to prove that I. S. is a Copyholder, and this notwithstanding he will in the Court say, that he is a Free-holder, and sheweth forth a Free deed and claim thereby, and teareth in pieces the Court Role, and publisheth the Free deed, this is a cause of Fine, and Forfeiture.

But if the said Tenant will there upon some colourable doubt, and question which may arise, whether he be a Free-holder, or Copyholder, say to the Steward, because he knows not whether the Rent that he should pay, be Free Rent or Copyhold Rent, he will pay it with protestation that the Rent may be recorded as it shall fall out, and with like protestation offer and do his Service, though in truth he be a Copyholder, yet this deserveth neither Fine nor Forfeiture.

If a Copyholder cannot pay his Rent, and will not do his Service, this offence is on the Negative, and maketh no Forfeiture till it be presented.

TENANT

Tenant per Copyhold faire waste nechaper with  
par vander, mes pur reparation distam. 26 Henr. 4.

12. 43. Ed 3. 32. 86. (A ( bisholds also vld

But if a Copyholder doth Alien his Land  
by free deed, or will commit waste, or defile  
his Copyhold contrary to the Custome, or  
will sue a Replevin against the Lord, for a Distr.  
lawfully taken for his Rent or Service due, or  
disclaim in the Land being summoned to the  
Lords Court, or will there claim it as his free-  
hold, or will in any other Court intitle any o-  
ther Lord unto it, or be attainted of Treason  
or felony, or continue out-land, or excom-  
municate, during the Lords Court, or refuseth  
to gowith his Lord or other Commissioners for  
that purpose in the service of the Prince, to  
supprese Rebels, riots, or unlawfull assemblies.  
All these Offences bee apparent mis-felance  
and forfeiture ~~apparell~~ without any present-  
ment.

But if a Copyholder being of the Grand In-  
quest at the Assizes or Sessions, shall inde-  
nre Lord of any manner of offence committed  
against the Prince or Lord of this Realm, or shal  
upon Proces Compulsary give evidence against  
His Lord, which is true, in any cause between  
his Lord and another Common person, or be-  
tween the Prince and his Lord without com-  
pulsary proces, or shall make any bodily arrest  
of his Lord by the Commandement of the  
Sheriff or other lawfull authority, or shall bring

wifewife  
a fforfeiture  
a Copy  
Ld of lands

14. 17. 18.  
15. 16. 17.  
18. 19. 20.  
21. 22. 23.  
24. 25. 26.  
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66. 67. 68.  
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72. 73. 74.  
75. 76. 77.  
78. 79. 80.  
81. 82. 83.  
84. 85. 86.  
87. 88. 89.  
89. 90. 91.  
92. 93. 94.  
95. 96. 97.  
98. 99. 100.

Any Action or Suit against this Lord in any of the Queens Courts, (except a Replevin as in the case aforesaid) All these last recited, be causes of neither Fines or Forfeitures of any Copyhold.

Also a Copyholder not claiming his Copyhold after the death of his Ancestor within a yeaire and a day, at the Court if any if any be, it is a forfeiture for ever; per opin Catline, Stowells Case 372. et c. il penc. cœ. deo bone custome in plu-  
sors Mannours.

If Copyholders being on a Jury will not find the waste committed, or will not present things presentable, this is a forfeiture of their Tenures, if they be Copyholders; by the opinion of Martin, Dier, and Brooke 4. Eliz. Dier 22.1. pl. 34.6. et. 7. Eliz. 233. b. 9. Hen. 6. 44. b.

If a Copyholder will not be sworn to, present such offences as are forfeitures, this is a forfeiture of his Estate; so if he alien or make Copyhold free, for tenne pound; the Lord may enter; for they are wilfull Acts, for which the Lord may enter without presentment; But for negligent offences, as for not doing Services or not acceptance of a Copyhold after the death of his Ancestor, the Lord cannot seize without presentment of the Homage. And if an Infant within the yeaire after the death of his Ancestor, will not after the Courts holden and Proclamation made, pray to be admitted, it is no forfeiture.

unless the Custome of the Mannour be, that an Infant ought to forfeit his Estate by such negligences; for it is but a claim at Common Law, which bates not an Infant, which hath not discretion. Between Hawrey and Buckshire one of his Copyholders. 12. Eliz. Rot. 96.

If thirteen Copyholders be sworne in a base Court, and twelve agree to give Verdict, and the thirteenth will not, it is not a forfeiture; for it is a good Verdict without his assent, and perhaps it is not agreeing to his conscience, and therefore it is not properly a not doing, or deniall to do his duty.

*Quare*, If there be 12. and 11. agree, and the twelfth will not, for it is not a full Jury. *Pasche.* 20. Eliz. Co. Bank. v. 3. Ed. 3. Verdict 40. 29. Ed. 3. *ibid.* 45. 12. Hen. 4. 10. *Skreene.*

*What Office or Power entirely, or dividedly  
hath the Lord, Steward, Free-holders,  
Copyholders, and the Bayliffes  
above in the Court Baron.*

**A**lthough the Lord, the Steward, the Free-holders, the Copyholders, and the Bayliffes of every Mannour, have an intermixt and joyned office and authority in some cases, and to some purposes; yet to other purposes their office is distinct and divided, and every of them doth occupy severall places, persons, and parts.

The Lord is chief to command and appoint, the Steward to direct and record, the Freeholder to affere and judge, the Copyholder to reform and present, the Bayliffe to attend and execute, &c.

And all these together make a perfect execution of Justice and judgements in a Court Baron; and without all these a Court Baron cannot be holden in his proper nature, in respect of all causes belonging to the perfect jurisdiction of a Court Baron.

And yet a Baron may be held by use & Custom for some Copyhold causes, though it want one of the said parties (viz.) the Free-holders, and there in Copyhold cases the Steward doth supply the place of a judge: but no other of the parties aforesaid, except the Freeholders, can be missed or spared in a Court Baron.

But to make some more particular demonstration of the distinct authorities and offices; and first the Lord as he is chief in place, so is he in Authority, and occupieth three severall Rooms; the one of a Chancellour in cases of equity, the other of a Justice in a matter of right, the third of himself in cases proper and particular to himself.

The Steward doth occupy the parts of severall persons, that is to say, a Judge to order in cases of Copyhold; and also a Minister, and Register to enter things into the Court Roles, and in both these to be indifferent between the Lord and his Tenants.

The

of Law and  
to be in the  
and before the  
Lord and  
serves

The Freeholders do likewise fulfill two parts, that is, to assere, and judge amerciaments, and also to returne and certifie judgements.

The Copyholders also do hold two severall rooms, w<sup>t</sup>z. to enform of offences committed against the Lord within that Mannour, and to present such things as shall be given in charge by the Steward.

The Bayliffe also doth occupy two parts, that is to say, to execute the proces and Commandements of the Court, and also to returne into the Court the Execution of the same Proces.

2. Ed. 6. Br. Break No case. 84. pl. 387. the Tenant, Copy de Court, Role Br. 16.

Under Steward in Court, within authority of the Lord, or of the High Steward, may demise Copyhold and it is a good Grant; for it is in full Court; but contrary it is if it be out of Court. Quare, if the High Steward without authority may demise out of Court.

*Finis Lecture Caltbrop.*

A Copyholder being indebted, doth not surrender to his Creditor, upon trust that he shall have the *Land* to satisfie himself of the debt, and then to be surrendred back again unto him; And after the debt levied, the creditor will not surrender, whereby according to the custome of the Mannour, the Tenant pursues an English Bill to the Lord in his *Court*, by which the trust is proved by deposition: the *Lord* seiseth the *Land* to the use of the first Copyholder untill &c. And *Wray* was of opinion, that he may well so do, for he hath no other remedy, for the *Lord* cannot imprison him, as the *Lord Chancellour of England* may doe: and that the custome of deposition is good; though some do doubt: but *Gandy* agrees, but he saith that the *Lord* cannot retain and keep the *Land*, and if he should so do, the other shall have a *Subpens*, wherunto *Wray* agreeth, that he cannot retain the *Land*, but seise it and grant it over, which without seising he cannot do, 25. *Eliz. B.* upon the motion of *Cook*, who said that 14. *Hen. 4. 39* and *Fitz. Nat. B. 18.* are according to their opinions: For a Copyholder shall not have a *Writ of Error*, nor false judgement, upon a judgement against him in *Court of the Lord*, but he shall sue by bill, and thereupon the *Lord* shall rescise the *Land* upon false judgement given by the *Steward*, and shall make restitution.

If

If one recover a debt by plaint in Court Baron, those of the Court have not power to make execution to the Plaintiff of the Defendant goods, but they may distraine the defendant, and after the judgement retain the distress in their hands in safegard, untill the Defendant hath satisfied the Plaintiff of that wherein he is condemned by the Court, 40. Court Baron Hen. 6. 17. See the Book of *Entrees*. Fol. 116. 7. <sup>Br. 3. and Exec-</sup> Hen. 4. 27. In Replevin the Defendant said, that one *Edward Besall* brought a Writ of *Droit* close against the Plaintiff, and one other in the Lords Court in ancient Demeasne, and declared in nature of *Affize*, and it was found against the Plaintiff, and damages were taxed; whereby the Defendant being then under Bayliffe, by the Stewards commandement, takes the beasts for execution of the damages, and takes an *sells* them, and delivers the Monies to the Plaintiff in *Affize*; this is a good Plea, and yet this is but a Court Baron. And Fol. 29. by *Hull*; A man recovers ancient Demeasne Lands, and damages in a Court of ancient Demeasne, and the Bayliffe may take the Beasts of him against whom the Recovery is, &c. for execution of Damages in every parcell of the Land holden of the Mannour, although that Land be Frank-fee, and it is not denied 22. *Affize* 72. agrees with 4. Hen. 6. Mr *Kitch*. 115. where it is used to make Execution by *levatis facias*, that is a good

**Custome. 38. Ed. 3. Custome 133. upon a recovery in Court Baron, the Defendants Cat-tell were delivered in execution.**

*Where a Tenant by Copy may plead a speci-  
all Custome, which is onely proper to  
him, and his Predecessors  
before him.*

**N**inth Eliz. Taverner was sued by the Lord Cromwell, for that he had committed waste upon his Copyhold; he pleads by the advice of Manwood, that he and those who before him had the house wherein he dwelt, had such a Custom by Prescription, that they might fell Timber-trees, &c. And many arguments were against that Custom, in as much as other Tenants of that Mannour, had not such a Custome, but were punishable and had forfeited their Lands for such waste; also that Custome was against common right, and not reasonable; and after long deliberation of the judges, it was adjudged, that a Tenant may plead a particular Custome, as if one prescribe to have a way in the Lords Land, &c. And 19. of Eliz. one prescribed that he and those of that Tenement his Predecessors had used to have common of Esto-vers in another Mannour, notwithstanding that the other Tenants have not such a Custome, and it was good by the advice of all the Justices.

*Where*

Where the Tenant may cut down Trees and  
destroy houses by Custome, and such  
like Customes, &c.

Fourth Ed. 6. Justice Dallisons Reports, Sanders, and divers Justices; Tenant by Copy of Court Role may prescribe to have Wood growing upon the Land. Montague, There is such a Custome, and so used in the Counties of Mid. Northland and other places. Browne, It hath been here agreed of late, that Tenant by the Custome may prescribe to suffer their houses to fall, and to destroy their houses; so also here, whereby this is a good Custome. Montague, I have heard a Fable, that a Tenant by the Custome may digge in the one part of his house, and burn the other part, by the Custome: But if you will agree that the Tenant by Custome shall have the Land against the Lords Will, to him and his Heires by the Custome; why then may they not by the Custome cut down Wood? Sanders, I agree to none of your Cases. Montague, surely in the Chancery it will be over-ruled against you without doubt, and it is necessary that an A& of Parliament be made upon it.

*Where and how Tenant by Copy may make a  
Jointure to his wife of the  
same Land.*

A Stranger brings a Writ of right against the Husband and Wife, in the same Court where the Land is by plea, and the Husband and Wife do appeare, and the Defendant doth Count against them, and the Husband and Wife do defend, and say that they have more right then the Demander, and offer to try it by Battell; and the Demander and Tenants do imparl, at which day the Demander appears, and the Husband and Wife make default, whereby finall judgement is given against them; and at the same Court the Recoverer surrenders the same Land into the Lords hands to the use of the Husband and Wife, and the Heirs of their two bodies begotten: and it was said that this Assurance hath been used. 1. Ed. 6. *Dallisons Reports.*

*Peler Hikden Trin. 36. Eliz. Rot. 547.* in the Kings Bench: Tenant in Tayle, the remainder in fee; Tenant in Tayle surrenders to the use of 1 S. in Fee; 1. S. suffers a Recovery, and vouches the Tenant in Tayl, who vouches the common Vouchee, and by speciall Verdict it was found that there was never any Recovery before in that manner, and it is not yet adjudged, *Gandy* and *Clinch*, that the Recovery can-

In Monsieur  
Wiers Reports  
whether a re-  
covery in  
Court Baron  
may defeat an  
Entail B. Regis  
2. Comment. 21.

cannot be a Barre ; for warranty cannot be annexed to an estate at will ; also he shall not recover in value, because of the estate at will. See the first part of the Institutes fol 6o. largely argued, and many Authorities cited. **Fenner and Popham** Chief Justice to the contrary , and that warranty may be annexed to Copyhold Land, though it be an estate at will of the Lord ; but as it is an estate in Fee, performing the services & duties, the Law will account them Tenants in Fee: also recovery in value being but a fiction in Law , the common Vouchee shall be accounted to have the Land in value of the Copyhold, within the Mannour; and the Vouchee *23 Hen. 8. Br. Recovery in value 27.* that such a Recovery is used in ancient De-measne upon a Writ of Right, and Voucher over, and that of a Freehold there; yet enquire of such a Recovery upon a plaint thereof Land of Base Tenure, for that cannot be warranted, &c.

But in the Common Bench , in Trespass brought by *Comb*, against *Peares and Turner*, Adjudged in the Common Bench, that a Recovery can not bind an Entail. *Mich. 36. & 37. Eliz. Rot. 14. Bromley Brittain Hall in Essex:* Tenant in Tayle of a Copyhold suffers a Recovery with Voucher, where no Recovery was before ; the Leaseee enters by the Court; that cannot be, but he shall have a Formdon in Descender; for the Recovery in Court Baron cannot avayl, because a Warranty cannot be annexed to an Estate which is at the Will of the Lord. Also there can bee no Recovery in value ; first because there can be no Recovery

in value of Lands out of the Mannour, and the  
 Coppy-land is at the Lords Will : Secondly,  
 Coppy-hold Land is granted by Coppy only ;  
 and if by the Recovery the Tenant may have it,  
 the Course and Custom of the Seigniory would  
 be destroyed, which shall not be : Thirdly, the  
 Lord shall lose his Fine, and Fealty also ; for the  
 Coppy is *Admissus est tenens, &c. Et dat. Duo de*  
*fine pro tali ingressu, &c. Et fecit fidelitatem.*  
 Fourth and fift, *Ph. & Mar.* A Coppyholder  
 surrenders to the use of his Wife for life, the  
 Remainder to the right Heires of the Hnsband  
 and Wife ; the Wife dies, the Husband survives :  
 the question is, who shall hold the Land ? and it  
 was laid that if the Husband had no issue by  
 that Wife, then his Heire shall have it.

*Certaine*

*Certain Copyhold Cases reported  
in a certain Book.*

But it was said there, that if the Wife had issue by another Husband, it was there doubted. But it was holden by the better opinion in *Dier*, that the Husband and his Heires shall have the Land; yet if the husband had first two Sonnes, the Heires of the Husband, and the Heirs of the Wife shall have the Land in common after the decease of the Wife; and for proof thereof he puts this Case, If Land be given for Life, the remainder to two men and their Heires, they cannot have one Heire in the Case: if the Tenant for Life dye before them in remainder, they shall be joint Tenants, and the Heire of the Survivor shall have all: But if none in remainder be in Life, when the Tenant for Life dyes, then the Heires of them in the remainder shall hold in common.

Thirty seventh *Henry the eighth*; A Copyholder to the intent to make an assurance to his Wife, suffers another to bring a Writ of Right in the Copyhold Court, and they joine the Battell, and at the day the Husband and Wife make default, and finall judgement was given, and after the Recoverer surrenders the same Land into the Lords hands, to the use of the Husband and Wife and their Heires; and a good assurance *per Cur.*

A Copyholder brings an Action upon the Case against Lessee for waste and *l'nod.*

A Copyholder makes a Lease at Will to another, who commits Waste, which is a cause of Forfeiture; the Lessor brings an action upon the Case against the Lessees by *Waltb Weston*, and *Dier*, the Lord may enter and have Trespass against the Lessor his Tenant; and therefore it is reason that he shall be recompensed. But the Lord shall have a speciall Writ of Trespass, and not *vi & armis*, because the entry was lawfull. 8 & 9. *Eliz. ibid.*

The Lord *Dacres* enters upon his *Coppy'older*, and Leaseth it to a stranger for years: the Lessee enters and was ejected by the Copyholder, and he brings a Writ of *Ejectione firme*: the Copyholder pleads that the Lands are demisable *per Custom*: and so they were at issue, and he shewed in evidence a Copy made 13. *Hen.* the eighth, by which a Tenant had surrendered the Lands, to have and to hold, &c. and whose Estate he had; and by another Tenant rendring the yearly Rent, Customes and Services; and also he produced certain Witnesses who proved the Land to be Copy by the space of 69 years. The Plaintiff to destroy the Title of that evidence, shewed certain Rentales that they were free Lands, &c. 9. et 10. *Hen.* 7. and not Copy: and also another Rentall to that intent, in 12. *Hen.* 6. which proved that those Lands were Leased for twenty years: *per Cur.* this evidence doth not disprove the Copy hold, for it was not within the time of memory

ry: but if he had shewed the Indenture of Lease made within 50 years, or 40 years, so that a man might remember it, then it had been good, although the Statute of Limitation extends not unto it: by the Justices, such evidence as approveth it to be within time of memory is good.

Also by them: if those Lands bee in the hands of the Lord by Forfeiture, Escheat, or Surrender, yet the Custome remaineth; for he may demise them again, and the Custome shall be revived; but by some men, if by Escheat, it be in the Lords hands, the Custome is extinct.

8. & 9. Eliz. *ibidem.*

Addington Lord of *Harlow* in *Essex*, would encrease the Fines of his Copyhold Tenants, which were proved to be certain: and it was holden that he could not encrease them; and it shall be a good prescription to say, alwayes ready to pay such a summe and no more. 18. 19. Eliz.

The Lord can-  
not increase a  
Fine which is  
certain.

4. Eliz. It was moved by *Manwood* Sergeant, if a Copyholder in Fee in right of his Wife do forfender, the Wife being not examined by the Steward, but by some of the Tenants, the Custome permitting it; the Husband dyes: Whether the Wife shal sue by plaint in Nature of a *Cas in vita*, or may enter? And by him she may enter, because it is no discontinuance, for that it is a Surrender to the Lord who hath the reversion for if a Tenant in Tail enfeoffeth him in the Reversion, it is no discontinuance; but if she had been examined

mined, she should have been barred for ever.

And *Dier*, if a Copyholder in Taile surrender to the Lord to the use of a stranger, the Issue may bring a plaint in Nature of a Fowmdone in discender, and purge the discontinuance, for it is within the statute *De donis Conditionalibus*, *L. 1. F. 16. Com. 333. 15. Hen. 8. Br. tit. Tenant per Copie 24.*

Nota.

And by *Manwood*, no negative Prescription may prevail against a Statute: And the Common Law is no other but an ancient usage throughout all the Realm; and a prime Custome may encounter with it, but not with a Statute.

And by *Dier*, if after the Surrender the Lord admit the Wife again, yet she shall be in by her Husband in construction of the Law.

Copyhold of inheritance descends unto two sisters by two venters, none of them making entry, and before the Court and admission one of them dyes, her heire shall have her moiety, and not the other sister, by *Dier* chief Justice in the Chancery.

Also if a Copyholder in Taile surrender to another in Fee, who is admitted, this is a discontinuance, and so the Husband of his Wifes Copyhold: And he said, that a remitter shall be of a Copyhold, as it shall be of a Freehold and inheritance at the Common Law. 13. & 14. *Eliz.*

In the *Duchy* it was in question, whether a Copy-

Coppyhold may be entailed or not? And by *Wray* Chief Justice, and *Manwood* Chief Baron, the Taile was not Fee simple at the Common Law, if it did not appear by the Custome, and that may be proved by the Court Roles, or by some other proof that there is a Recovery by plain of Formidon, or the Lands had descended according to Land in Taile, as *possessio fratris* shall not be of it, or that the Daughter shall not inherit, before the Sonne which is uncle to the same. *Egerton* was of counsell with this Case which was between *Sherington* and another. 22. *Eliz.*

*Hanchet* and *Rosse* concerning Land of *Dicot* in *Stepping Hackney*, a Coppyholder of inheritance dies, the Lord grants the Wardship of the Land during the minority of the heire, to the Wife being sole; she takes a Husband and dies: It was demanded whether the Husband should have it or not? And it seemed not; but if it had been a thing in which he had interest to his own use, that he should have it as a Lease for yeares; the Executor shall have it without admittance of the Lord: so the Husband shall have a Lease for yeares made to his Wife, without admission.

By all the Justices 17. *Eliz.* If a Coppyholder in Fee take an estate in Taile by Charterhold, or take a Lease for yeares by Indenture, his Coppyhold is confounded.

7. & 8. *Eliz.* by *Harpour* and others; a *Leesse*

for years of a Mannour may make his *Copies* (if the *Custome* be so) to a man and Heires *secundum consuetudinem, &c.* for if the *Coppyholder* in Fee die, his *Heire* is by descent, and ought to be admitted, or else he shall compell the *Lord* to admit him, for it is of necessity. But in *Copies* for life or yeares it is otherwise; for by the death of the *Tenant*, there is not any that can compell the *Lord* to make him a new *Coppy* if he will not, but he may retain the *Land* in his own hands, and therefore the Grants of such *Copies* as are expired, made by a lessor for yeares are void.

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## 26. ELIZ.

**F**irst, *Land* demisable, by *Coppy* in the time of *Richard* the second, is perfect *Coppyhold*; so if it be demised by *Coppy* 13 or 16 years.

Secondly, if the *Lord* purchase the *Coppyhold* of his *Tenant* for money, this is clearly a *Surrender*, and an extinguishment of the *Coppy*, and it is not demisable by *Coppy* after: But if the *Lord* enter for *forfeiture* without presentment found, that is demisable by *Coppy* again.

Thirdly, if the *Lord* bring *Trespass* against a *Coppyholder*, who pleads that it is *Freehold*, this is a *Forfeiture*, and the *Lord* may enter.

Fourthly, the *Lord* cannot seise, because his *Coppyholder* was sworn to give evidence against him, for this is no *forfeiture*.

Fift-

Fistly, if a *Cohpyholder* disseise his *Lord* of other *Land*, that is not a forfeiture of the *Copyhold*. Sixthly, if a *Copyholder* die without *Heire*, and the *Lord* enter by *Escheat*, this is demisable by *Coppy* again: but if the *Lord* afterwards do make a *feoffment* or suffer a *Recovery*, and after do repurchase it, it is not demisable, but if the *Lord* reverse the *Judgement* upon *Recovery* by error, attaint or *deceit*, and hath *restitution*, then it is demisable by *Coppy* again.

A disseisin doth not extinguish the *Custome*, nor acts done by the disseisor.

Seventhly, if a *Copyholder* suffer a *Recovery* to be prescript at common *Law* by collusion, or make a *feoffment*, or *bargaine and sale*, and the *Lord* enters, and makes a *Lease* for years thereof, this *Land* is not demisable by *Coppy* again.

Eightly, if a *Coppyholder* surrender his *Land*, to the intent that a stranger shall have the Rent out of it by *Coppy*: it is no good *Copybold Rent*.

Ninthly, if there be two joint *Tenants in common* of a *Mannour*; and a *Copyholder* surrenders to the use of one, this is not *Coppyhold Land*.

Tenthly, if the *Husband and Wife* be joint *Copyholders* of the purchase of the *Husband* during *Coverture*, and the *Husband* is attainted of *felony* and dyeth, this is not a forfeiture of any part of the *Copyhold*: but if the purchase was made before the *Coverture*, then it is a forfeiture of the *Moity*.

Ele-

Eleventhly, if two Copyholders exchange by licence, and after the part of the one is recovered by an elder title, he may enter into the Land which the other hath in exchange.

Twelfthly, if two Coperceners Copyholders make partition, and the one is impleaded, and doth lose by just title, and the recoverer enters into the Land, she cannot enter upon her sister, because she did not pray in aid for the rate. A feme Covert joyned Copyholder in Fee may surrender her moiety to the use of her Husband, and it is good.

Thirteenthly, the Kings Steward without any patent of his office seiseth divers Copyholds, and afterwards the *Lord Treasurer* and those of the *Exchequer* do lease the same *Land* for years, and thereupon it was moved, whether Coppies made by the Steward without patent were good? and the *Lord Dier* thought they were good Coppies, but in the *Exchequer* the *Basons* were of another opinion.

Fourteenthly, a man seised of a Mannour, to which Copyholders for yeares and others are belonging, he deviseth by Testament the same Mannour to a certain person for payment of his debts, during which time divers Coppies expire, and the Devisees grant new Coppies, and afterwards during the term, the Devisees grant in reversion, a particular Tenant surrenders in Court, to the use of the Grantee, and after the Wife of the Devisor recovers in Dower part of the Man-

nour, and hath Execution of those Copy-holds assigned by the Sheriffe for her Dower: And it was moved, whether the Wife shall avoid those Coppies made by the Devisees? And Justice *Brown* was of opinion that no; to which *weston* agreed; for they said, that those are ordinary things, and which must be done of necessity by force of the Custome, and not any deed or new charge created by the Devisees who are but Officers to execute the Custome which of necessity must be done, for they cannot be made by any others who have the possession of the Mannor; for it hath been adjudged, that such Coppies and ordinary things, as Presentment to a Church made by a Disseur, or by a Lessee for Life or Years shall stand good, and shall not be avoided by reason of the necessity: but other charges created by the Heire after the death of the Husband, as a Lease for yeares Rent charge in which there is no such necessity, the Tenant in Dower shall discharge them, and although the Wife shall be adjudged in by her Husband, yet she shall not have those things which chance before assignment of her Dower. If a Wardship fall, or an avoidance of a Church, or a villain Regardant hath purchased, and the Heire enters, or presents, these things the Heir shall have, and not the Tenant in Dower; & it may be that the Wife will never sue for her Dower, or peradventure she shall have other Mannours assigned her for the same. And as to the reason, that

it is not a thing of necessity to grant Coppies in reversion, yet they were of opinion that because the Custome doth allow it, it is *Custome ley*, and therefore it may be put in execution: for the Custome is annexed unto the Land, and not unto the interest of the Lord. But *Wray* said that of estates that are to Copyholders and their Heires according to the Custome of the Mannour, if such a Copyholder die without Heire, the Custome is determined. If such a Lessor for Life or yeares of the same Mannour grant new Coppies, they are not good, and so there is a diversity.

A man cannot devise that his friends shall make Coppies or hold Courts, for none shall make Coppies, but he that is Lord of the Mannour, and hath an interest.

The Lord of the Mannour shall have the government of the Copyhold during the infancy of his Tenant. Executors shall have a Lease for yeares of Copyhold Land without any new admittance.

The Husband of a Wife that is Copyholder for yeares, shall not be newly admitted after the death of the wife, nor be Tenant by the courtesie.

Where inheritance of a Copyhold descends, the Heire may enter without admittance; but it was a doubt whether he should have an action of Trespass against a stranger before admittance; for before admittance he is not properly

ly Tenant; if such an Heire will not come to the next Court, the *Lord* may make Proces against him.

A Copyholder shall have Trespass against his *Lord*, if his *Lord* out him, paying his Servi-  
ces and Customes.

If erroneous judgement be given against a Copyholder in the *Lords* Court, the *Lord* in his Court may reverse it, for it is not amenda-  
ble in any other place or Court.

If the *Leesse* of a Copyhold commit waste, and the *Lord* seifeth for Forfeiture, the Copyholder shall not have an action of waste against his *Leesse*; as if Tenant for life make a *Lease* for yeares, which *Leesse* maketh waste, and the *Le-  
sor* recovers, the Tenant for life shall not have an Action of the Case, but is without remedy; for it was his folly that he would not have a colla-  
terall covenant of the *Leesse* that he should do no waste.

A Copyhold is not forfeit for heresie by the Stat. of 2. Hen. 5.

A Copyholder is not Ter-Tenant, but is Tenant at the *Lords* will; and a Copyhold is not bound by the Statute of VVills nor of Fines, nor of Limitations.

A Copyhold shall not be extended by a Statute Merchant or Staple.

The Husband and VVife being seised of a Mannour to them and the Heires of the Husband, he grants a Rent charge out of it, and dies;

K the

the Copyholder surrenders, the VVife makes another Copy, and dies, the Grantee shall distrain upon the Copyhold.

If the Lord of a Mannour hath a great waste, and grants a Rent charge out of the same, and the Copyholders have Common in the waste, and they put in their Cattell, the Grantee shall distrain them, if they cannot make Prescription.

If a Copyholder surrenders to the use of another, and the Lord will not admit him, nor make a Grant unto him, the Surrender is void.

If there be two joint Copyholders, and the one commits a forfeiture, he shall forfeit but the Moity.

Lessee for years of a Copyhold shall have an *ejec*tion*e firme*, by Plowden and others.

If there be a Lease for years of a Mannour, and one Copyholder purchase the Reversion in Fee, this is a destruction of the Copyhold, and the Lessee of the Mannour may put him out, and occupy during his terme. 8. Eliz. adjudged.

A Copyholder purchaseth the Mannour to him and another in Fee, the companion may occupy the Copyhold jointly, presently 14. Eliz.

*Nota*, it was agreed in the Common Bench, 21. Eliz. that the Bayliffe of a Hundred, or of a base Court may take goods upon *l*emari*f*aci*as****, to give Execution to the Plaintiff, as well as the Sheriff; yet they agreed that divers books are against it. 4. Hen. 6. 22.*

Two

See before  
here fol. 75,  
and 76.

Two joint *Coppyholders* in Fee make a partition; that is good and no forfeiture, nor alienation. 12. Eliz. agreed in Duchy chamber.

If a *Coppyholder* surrender, and then the *Lord* doth acknowledge a *Statute Merchant*, and after the *Lord* grants it by *Coppy*, the *Coppyholder* is liable; for at the time of the acknowledgement it was annexed to the *Freehold*; but if a *Coppyholder* acknowledge a *Statute*, that is not liable.

If a man enter with force upon a *Coppyholder*, he shall not have forceable entry, nor indictment, but the *Lord* shall have it; and upon reparation to the *Lord*, the *Coppyholder* shall enter.

The *Lord* grants to a *Coppyholder* his trees growing, or that shall be growing upon the *Land*; he may fell trees now growing, and no Forfeiture, by reason of the dispensation, but he cannot cut the trees which shall grow in time to come.

If the *Defeisor* of a *Mannour* make Copies for life, and the *Defeisee* enter, he shall defeat them; but of *Coppyholds* in Fee before *Defeis*in, and a new grant of them upon Surrender in time of *Defeis*in, it is otherwise *per Plowden*.

*Popham in Case Ramsey advers. Arthur 29. Eliz.*  
A *Coppyholder* may prescribe to have common in the *Lord's Land*.

If a *Coppyholder* surrender to the use of another, and the *Lord* grant it to *cesty que use*, making

king no mention of the Surrender, yet it is good  
per *Plowden*.

If there be a Mannour consisting of Dmeaf-  
nes, Freehold and Customary Tenements, if  
the *Lord* grant certain of the Copyholds in  
Fee, the Grantee may keep Court, and do ho-  
mage, and the Copyholders by their oaths may  
make presentments of their Customes, or of  
the death of any Tenant, and the Grantee may  
make in Court a new estate by Copy, as if it  
should be a perfect Mannour; but the stile shall  
not be *Curia Manerii*, but *Curia-Halimoti*, *id est Convocatio tenentium*, for when they are as-  
sembled they may enforan the *Lord* of their  
Customes and duties. It was otherwise adjudg-  
ed in the *Com. Bench.* 29. *Eliz.* between *Dod-*  
*dington* and *Chaffin* for parcell of the Mannour  
of *M.*

*122 in vro  
for me j. 1608  
for the copy  
hilt of the ad  
zurwghs: /*

It was adjudged in the common Bench 29.  
*Eliz.* that where Sir *Peter Carew* being solely  
seised of the Mannour of *M.* in the County of  
*Devonshire* for life, granted a Copie in rever-  
sion according to the Custome of the Mannour,  
and died before the particular Copyholder:  
this is a good Copy in Reversion against the  
*Lord*, in whose hands soever the *Signiory* should  
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